

Given the current ongoing litigation over TEC 141.041, in which three of the committee members, Stephanie Klick, Briscoe Cain, and Valoree Swanson are directly involved, now (September 18) is not an appropriate time for relitigating before the Committee.

Rather than discussing HB 2504, this paper proposes a more comprehensive reform of the Texas Election Code.

That said, the litigation has revealed numerous problems with the Texas Elections Code.

Require Secretary of State to follow formal regulatory process when adopting election regulations

The Elections Code should have a provision requiring that when the Secretary of State (or any other agency) adopts regulations that they should fully comply with the Government Code Title 10 Subtitle A. It should be an embarrassment given that the Secretary of State maintains the Texas Register and Texas Administrative Code, that the Elections Division would purport to adopt regulations via a hastily and poorly drafted web posting, bypassing any public comment or hearing or even notifying the Elections Committee of their proposed regulations. This provision should be in Chapter 1 of the Texas Elections Code.

There are numerous omissions in Chapter 181 of the Texas Elections Code. The general assumption is “Oh! We forgot about them!”. That is, it is merely gross negligence rather than malice.

Eliminate Partisan Nominations and Party-Run Primaries

The political parties are not competent to administer their primaries. It might have been true when the Democrats were the only primary party, and they only had to have the local newspaper print ballots, and the primary was on a Saturday, and the election clerks only had to check that the poll tax had been paid, and the paper ballots were dumped out and counted before the precinct chair went over and ran the precinct convention.

Over the past decade, numerous provisions have been added to the Election Code to make it appear like the SOS is running the primaries. Now is the time to make that a reality.

Modern elections are complicated, with complicated voting machines, and early voting that requires coordination to ensure that voters do not cross-affiliate or vote twice. Party chairs have an inherent conflict of interest. They may recruit candidates, then are expected to act as neutral arbiters of the applications and petitions, and then advocate for the election of the nominees. It is not unknown for a candidate to pay their filing fee to help pay for the primary, and also write a check to the party for partisan activity.

In some counties, the Republicans and Democrats have not found anyone willing to be a county party chair. There can be no filing for county or precinct office, and the Election Code has been changed so that the State Party can demand that the county election officials run their primary.

Combine Spring Elections for local offices with Elections for State and County offices

There are two elections in the Spring, the partisan primaries, with the electorate segregated by party affiliation and the local elections in which all can participate. Because of the separate primaries, these

cannot be combined. You cannot require Republicans to go to the Democratic clubhouse to vote for mayor or school board member, or vice versa. It is actually a criminal offense for a Libertarian to vote in the Democratic or Republican primary. In addition, because of the timing of sending out mail ballots, the two elections leap-frog each other confusing voters.

Make county, precinct, and judicial offices non-partisan

Across most of the state, county and precinct offices are dominated by one party or the other. If you want to help elect your county judge, commissioner, or constable, you must vote in their primary. If you do want Joan, or do not want Joe to be county commissioner, you must vote in their primary, even if it means skipping the presidential or gubernatorial race. Of course, you can make contributions to the candidates, or put up a yard sign, or block walk, but you are legally forbidden to actually vote for your candidate of choice.

Local and judicial offices should be non-partisan. Most county offices are administrative rather than policy making. There is no more reason to have party labels on constables and county clerks, than there is for mayors or city council members.

Lawyers naturally have an interest in the laws and legislation and may be drawn to political activity, but not necessarily of a partisan nature. An extreme partisan may not be a fair or equitable judge. Judges may be elected not based on their personal qualities but based on their party's political stances. Judges may be forced into partisan activity to build credentials with primary voters or be forced to align with the dominant party in their area simply to be elected, or even re-elected. Partisan sweeps can wipe out decades of judicial experience.

Eliminate Filing Fees

Filing fees serve no real purpose. They do not demonstrate support from potential constituents. They do not necessarily represent support from Texans since out-of-state contributions are legal. A single wealthy individual, Bo Pilgrim (or his estate), could bankroll an entire slate of 150 House candidates. Someone who can splurge \$750 for a weekend in Lake Charles can splurge \$750 on the filing fee. It does not demonstrate qualification to be a legislator. Meanwhile, because Texas does not allow anonymous political contributions, the Texas Ethics Commission discourages use of a contribution jar or passing the hat.

Filing fees do not necessarily deter candidates from filing, particularly for high profiles offices such as Governor or US Senator. California and Washington rely on filing fees and have seen dozens of candidates for those offices in recent years. In the 2003 California gubernatorial recall election, there were 135 candidates who each paid a \$3500 filing fee. In the 2016 Republican presidential preference primary in Texas, a Williamson County woman paid the \$5000 filing fee then virtually disappeared. At most, a marginal handling fee of perhaps \$10 should be assessed.

Replace Petitions with Demonstrated Personal Support

Petitions may demonstrate support, but the large number of signatures required may trivialize the effort into professional circulators harrying shoppers entering Walmart. A statewide effort to qualify an independent candidate is likely to expend several hundred thousand dollars. Many signatures are not registered voters, or duplicates, or are illegible. Petitions are subject to gotcha challenges (for example,

every petition sheet did not contain a position number for a Supreme Court justice) and have been subject to fraud.

Instead true support at a much lower level can be demonstrated by supporters appearing at county courthouses and being counted. If the threshold were 1/20 of 1% of the last gubernatorial vote in the area covered by the election, then 4172 supporters would be needed for a statewide office. An average House district would require 28 supporters, with a range of 12 for HD-140 in Harris County to 54 for HD-47 in Travis County.

For Congress, the average level of support would be 116 supporters, ranging from 60 to 180. The supporters can appear at their local courthouse. One can imagine a campaign caravan for a candidate for TX-13 travelling from Dalhart to Decatur, with stops not only in Amarillo and Wichita Falls, but Canyon, Hereford, Dumas, Pampa, Canadian, Childress, Quanah, Guthrie, and Gainesville. At each courthouse, the supporters would gather, the candidate would speak, and then the supporters would file into the courthouse to be counted. Appearance could be by appointment, with the county clerk office required to be open on Saturdays during the filing period. It would be a much more newsworthy event than a reporter checking the SOS website to see who sent in a check.

Conceivably appointments could be made at courthouse annexes in larger counties. With a relatively small number of participants, same day registration might be offered. A new voter could register and be counted as a supporter. In Zambia, where this system is used, campaigns hire bands and often bring additional supporters to rallies to demonstrate support beyond that needed to qualify.

There would be a clear role for political parties in this process since they would be best able to arrange these rallies. It could also encourage more active participation by ordinary citizens in the political process, and they would be less be viewed as marks for solicitation of political contributions, or mere voters to be pushed to the polls.

There might be distribution requirements for statewide candidates, akin to those now required for Supreme Court justices to limit the ability of campaigns to pile up supporters in Houston and Dallas. One might limit the number of supporters to 1/10 of 1% of the gubernatorial vote in a county. That would limit support to 1217 from Harris County, roughly 29% of the statewide total. There could also be a requirement to gather at least some support from smaller counties.

There could be a floor of five supporters. This would apply in the 154 smallest counties. A candidate for county judge or sheriff in these counties would need to secure five supporters to be placed on the ballot.

Use Current System of Special Elections for Partisan Offices

The system of election for partisan offices would be that presently used for special elections. All candidates would file with state or county officials and appear on a single ballot used by all voters. Candidates could have a party label or designate as independent. If no candidate received a majority there would be a runoff.

Texans are familiar with this type of election. Representatives Fierro and Israel were first elected to the House in a special election. John Tower was famously elected as a Republican US Senator in 1961 when LBJ resigned to become Vice President. Special elections were used for some congressional seats in 1996

and 2006 after district boundaries were changed. This happened after the primaries had been held, with those results discarded. Laura Thompson was elected to the House in 2016 as an Independent from Bexar County in a special election. This summer, special elections have been held to fill vacancies in senate districts 14 and 30 to fill the vacancies due to the resignations of Kirk Watson and Pat Fallon.

Local elections for city officers and school trustees use the same system if they utilize a runoff. Thus, the same electoral system could be used for all elections, with the only difference being that some offices will have partisan labels and others will not.

May Election for County, Precinct, and Local officers

In 2022, four elections, the general primary, the runoff primary, the May uniform local election, and the local election runoff could be combined in a single election in March or May. But because the runoff for state, district, county, and precinct offices would be in November with six to eight months between, it would be better to move the state and district offices to the fall (September or October).

County and precinct offices would be held in May along with local offices, with any runoffs in June. It may be possible over time to convert county and precinct offices to non-partisan offices, but that may be too big of an initial step. In addition, it may be desirable to move all local elections to the Spring, though this could also be deferred.

This Spring election would be conducted as a joint election by the county clerk. Election costs could be allocated based on votes cast for an entity's officers relative to the total votes cast. Counties would pay for the election of county and precinct officials, cities and school districts would pay for the election of city council members, mayors, and school trustees.

A declaration of candidacy could be made after January 1, with supporters appearing at courthouses to qualify candidates a deadline around early March.

September-November Election for Federal, State, and District Offices

Candidates for federal, statewide, and district office would be held in the fall, with a September election followed by a November runoff.

Declarations would be required after perhaps May 1, with appearances at courthouses throughout the summer. For now, local elections could continue to be held with in the fall, but it would be preferable to move them to the Spring. Elections would be conducted by county election officials. The State might compensate counties for the cost of electing federal, state, and district officers.

Under current federal law, US Representatives and Senators must be elected on the first Tuesday after the first Monday in November. This means that a runoff for federal offices would always be held in November between the Top 2 candidates, even if a candidate received a majority in September.

There are no election dates mentioned in the Texas Constitution. There is a November 1 date in Article IV Section 12 apparently aimed at limiting lame-duck appointments by a governor who is not seeking re-election. It would be better in general to limit appointments to fill vacancies in elective office.

Presidential Elections and Party Conventions

A presidential preference primary could continue to be held in March every fourth year. Perhaps the parties could pay for it. The presidential election would continue to be held in November.

With the elimination of partisan primaries, election of party offices would occur at party conventions. The election code could remove most of the specific provisions for conventions, since these would now be for a private purpose.